

SEP 28 2007

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

**CATHY A. CATTERSON, CLERK
U.S. COURT OF APPEALS**

FOR THE NINTH CIRCUIT

DOUGLAS S. MAUSELLE,

Plaintiff - Appellant,

v.

RODGERS MARINE LLC, doing
business as Rodgers Marine Electronics; et
al.,

Defendants - Appellees.

No. 06-35229

D.C. No. CV-05-05464-FDB

MEMORANDUM*

Appeal from the United States District Court
for the Western District of Washington
Franklin D. Burgess, District Judge, Presiding

Submitted September 24, 2007**

Before: CANBY, TASHIMA, and RAWLINSON, Circuit Judges.

Douglas S. Mauselle appeals pro se from the district court's order
dismissing, for lack of personal jurisdiction, his diversity action alleging state law

* This disposition is not appropriate for publication and is not
precedent except as provided by 9th Cir. R. 36-3.

** The panel unanimously finds this case suitable for decision without
oral argument. *See* Fed. R. App. P. 34(a)(2).

claims arising from the purchase of a houseboat. We have jurisdiction pursuant to 28 U.S.C. § 1291. After de novo review, *Ochoa v. J.B. Martin & Sons Farms, Inc.*, 287 F.3d 1182, 1187 (9th Cir. 2002), we vacate and remand.

In his opposition to defendants' motion to dismiss, Mauselle requested leave to amend his complaint. However inartful, Mauselle's pro se filings set forth a basis for personal jurisdiction in the fact that the transactions at issue in his complaint involve "commerce" on the Columbia River and therefore affect citizens of both Oregon and Washington. Because defendants had not yet filed a responsive pleading, Mauselle had a right to amend his complaint to state with more particularity the basis for personal jurisdiction over defendants. *See* Fed. R. Civ. P. 15(a) ("A party may amend the party's pleading once as a matter of course at any time before a responsive pleading is served."); *Miles v. Dep't of Army*, 881 F.2d 777, 781 (9th Cir. 1989) (holding that motions to dismiss are not responsive pleadings within the meaning of Fed. R. Civ. P. 15(a)). We therefore remand so that Mauselle may amend his complaint.

The parties shall bear their own costs on appeal.

VACATED and REMANDED.